

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER:	1914.02
COMPLAINT INVESTIGATOR:	Bridget Hand
DATE OF COMPLAINT:	May 13, 2002
DATE OF REPORT:	June 12, 2002
REQUEST FOR RECONSIDERATION:	no
DATE OF CLOSURE:	September 6, 2002

COMPLAINT ISSUES:

Whether the South Bend Community School Corporation violated:

511 IAC 7-27-7(b)(1) by failing to ensure that the student's teacher of record (TOR) monitored the implementation of the student's individualized education program (IEP);

511 IAC 7-29-6 by failing to convene a case conference committee (CCC) to conduct a manifestation determination within 10 instructional days of deciding to change the student's placement for disciplinary reasons;

511 IAC 7-29-5 by failing to convene a case conference committee (CCC) to develop a plan for assessing the student's functional behavior if no behavior intervention plan exists or reviewing an existing behavioral intervention plan within 10 business days of the eleventh day of suspension;

511 IAC 7-29-2 by failing to comply with change of placement procedures when suspending a student for more than ten consecutive instructional days;

511 IAC 7-23-1 by disclosing personally identifiable information about the student to local law enforcement authorities without the parent's consent; and

511 IAC 7-28-4(d) by failing to provide written notice at a case conference committee (CCC) meeting no later than the student's 17th birthday, that the rights currently afforded the parent will transfer to the student at the age of 18 unless a guardianship of the student has been obtained.

FINDINGS OF FACT:

1. The student (the "Student") is seventeen years old and eligible for special education and related services as a student with an emotional disability.
2. The Student returned to public school from a residential placement on October 16, 2001.

3. The complainant asserts that the teacher of record did not monitor the implementation of the Student's IEP because the TOR failed to: provide assistance to general education teachers; monitor student's assignments; check Student's progress reports, grades, and attendance; schedule a case conference committee meeting when the Student reached ten (10) days of suspension; and ask for a manifestation determination.
4. A CCC was convened on January 16, 2002, at which time the Student's placement was changed from the "Levels" program to the general education classroom. The Individual Education Program Addendum dated January 16, 2002, states the TOR will provide the Student's IEP to the Student's teachers. However, the school provided no documentation to demonstrate that the TOR provided copies of the Student's IEP to the Student's teachers. The Student's general education teachers report that they sent progress reports with grades and attendance to the parent, except in one class that the Student only attended twice and then the information was sent to the TOR and no progress report was sent out. The Student did not regularly attend any classes. The IEP does not indicate the TOR is responsible for either monitoring the Student's assignments or checking the Student's progress, grades and attendance.
5. The school provided the Student's Suspension Report Entry. The report shows that the Student was suspended for a total of nine school days on six separate occasions from October 19, 2001, through March 13, 2002.
6. The Student was arrested on March 22, 2002, and detained at the Juvenile Justice Center until after his Dispositional Hearing in or around May 2002, when he was transported to a Department of Correction facility. This arrest and detainment occurred near the end of the first grading period for the Student subsequent to the change of placement to general education classes in January 2002.
7. The probation department completed a Predispositional Report on April 22, 2002. This report included information about the Student's grades and school attendance. Neither the school nor the probation department obtained written consent from the parent for the school to disclose any part of the Student's educational records to the probation department. The school relied on a "Miscellaneous Court Order", dated June 8, 1994 that authorized the exchange of information between the school and the Court "on specific cases concerning delinquent children." The Order was issued pursuant to I.C. §31-6-8-1(d), which was repealed in 1997.
8. The Predispositional Report also contains information provided by school law enforcement to the juvenile probation department regarding an alleged crime committed by the Student on school property. This offense was one reason the Student was before the Court for disposition.
9. The Student turned seventeen years old in November of 2001. The Case Conference Summary/Individual Education Program, dated April 19, 2000, shows in the conference notes that the teacher of record reviewed the transfer of rights. Further, the IEP Transition Information shows that information on transfer of rights was discussed. The parent signed this Case Conference Summary/Individual Education Program and indicated she was offered a copy of the Parent's Rights, which includes a section entitled "Transfer of Rights." While the Student was

present at this case conference, there is no indication that the Student received written notice of the transfer of rights.

CONCLUSIONS:

1. Finding of Fact #3 identifies the specific activities that the complainant alleges the TOR failed to perform as part of the TOR's alleged failure to monitor the implementation of the Student's IEP. However, Findings of Fact #4, #5, and #7 reflect that the TOR was not required to carry out some of the activities alleged by the complainant. Further, Finding of Fact #4 reflects that the TOR was required to provide copies of the Student's IEP to the Student's teacher, but the School was unable to provide any documentation to demonstrate that the TOR carried out this responsibility. As there is no documentation that the TOR provided copies of the Student's IEP to the general education teachers, a violation of 511 IAC 7-27-7(b)(1) is found.
2. A change of placement for disciplinary reasons occurs when the school removes a student from the student's current placement for more than ten consecutive instructional days. When such change of placement occurs, the CCC must convene and conduct a manifestation determination. Finding of Fact #5 demonstrates that, although the school suspended the student on various occasions, no suspension exceeded ten consecutive instructional days. Finding of Fact #6 reflects that the Court having juvenile jurisdiction removed the Student from his current educational placement when committing the Student to the Department of Correction. Because no change of placement for disciplinary reasons occurred, the school was not required to conduct a manifestation determination. Therefore, no violation of 511 IAC 7-29-6 is found.
3. When a student has been suspended for more than ten cumulative instructional days, a CCC must be convened to develop a functional behavioral assessment plan or revise an existing behavioral intervention plan. Finding of Fact #5 shows that the Student was not suspended for more than ten cumulative instructional days. Therefore, no violation of 511 IAC 7-29-5 is found.
4. A change of placement for disciplinary reasons occurs when the school removes a student from the student's current placement for more than ten consecutive instructional days. Finding of Fact #5 demonstrates that, although the school suspended the student on various occasions, no suspension exceeded ten consecutive instructional days. Finding of Fact #6 reflects that the Court having juvenile jurisdiction removed the Student from his current educational placement when committing the Student to the Department of Correction. Because no change of placement occurred, as defined by Article 7, the school was not required to implement procedures for effecting a change of placement. Therefore, no violation of 511 IAC 7-29-2 is found.
5. Finding of Fact #7 shows that written consent was not obtained from the parent prior to the school disclosing personally identifiable information from the Student's educational record to the probation department. Although 511 IAC 7-23-1(q) identifies situations in which the school may disclose personally identifiable information from a student's educational record, this situation is not included in those exceptions. Therefore, a violation of 511 IAC 7-23-1 is found.

6. Finding of Fact #8 shows that the school reported a crime committed by a student with a disability to the juvenile probation department. 511 IAC 7-29-9 permits a school to report a crime to appropriate authorities. Therefore, no violation of 511 IAC 7-29-9 is found.
7. At a CCC meeting no later than the student's seventeenth birthday, the school is required to provide written notice to the parent and student that educational decision-making rights shall transfer to the student at the age of 18 unless a guardianship of the student has been established. Finding of Fact #9 shows that the parent and Student were present at the case conference committee meeting on April 19, 2000, when the transfer of rights was explained, discussed, and offered to the parent in writing. There is no documentation that the parent or the Student received written notice of the transfer of rights. Therefore, a violation of 511 IAC 7-28-4(d) is found.

The Department of Education, Division of Exceptional Learners requires the following corrective action based on the Findings of Fact and Conclusions listed above:

CORRECTIVE ACTION:

The South Bend Community School Corporation shall:

1. Review, and if necessary revise, the policies and procedures concerning the responsibilities of the teacher of record. After this review and revision, send a written memorandum to all special education teachers regarding these responsibilities. An assurance statement that the policies and procedures have been reviewed and a copy of the memorandum, along with a list of all recipients shall be submitted to the Division of Exceptional Learners no later than September 6, 2002.
2. Review, and if necessary, revise the policies and procedures regarding the disclosure of personally identifiable information from a student's educational records to ensure compliance with 511 IAC 7-23-1, 511 IAC 7-29-9, 34 CFR Part 99 (the Family Educational Rights and Privacy Act), and IC § 20-10.1-22.4. An assurance statement that the policies and procedures have been reviewed and are compliant with the requirements of Article 7, FERPA, and the Indiana Code, and that appropriate staff have been advised of these policies, procedures, and requirements shall be submitted to the Division of Exceptional Learners no later than September 6, 2002.
3. Send a written memorandum to appropriate personnel regarding the requirement that written notice of the transfer of rights be provided to the parent and the student. Personnel should also be advised that: (a) the student's IEP is to contain a statement that the parent and the student have been informed that a transfer of rights will occur, and (b) the parent's and student's receipt of the written notice of the transfer of rights should be documented for compliance purposes. A copy of the memorandum and a list of memorandum recipients shall be submitted to the Division of Exceptional Learners no later than September 6, 2002.